IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL (W) No.135/2007

The Rajasthan State Agricultural Marketing Board
Vs.
Govind Narain Lata & Anr.

D.B. CIVIL SPECIAL APPEAL (W) No.260/2007

The Rajasthan State Agricultural Marketing Board
Vs.
Ram Charan Saxena & Anr.

D.B. CIVIL SPECIAL APPEAL (W) No.261/2007

The Rajasthan State Agricultural Marketing Board
Vs.
Mangi Lal Solanki & Anr.

Date of Judgment :: 01-03-2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri K.K. Sharma]
Shri R.N. Mathur]
Shri R.A. Katta] for the appellant.

Shri S.M. Mehta]
Shri R.C. Joshi]
Shri Sanjay Pareek] for the respondents.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)(ORAL) :

REPORTABLE

The dispute in this batch of appeals which were heard together relates to retirement age of the employees other than class IV employees of the Rajasthan State Agricultural Marketing Board (in short, 'the Board'). By the order impugned in Special Appeal no. 135/2007 arising from S.B. Civil Writ Petition no. 6354/2006, a learned Judge of this Court

held that the retirement age of the employees of the Board is sixty years by reason of the amendment of rule 56 of the Rajasthan Service Rules, 1951 (in short, 'the RSR'), and accordingly while allowing the writ petition, directed the appellant to allow the petitioner to continue in service with all consequential benefits up to the age of sixty years. Other two writ petitions giving rise to Special Appeal nos.260/2007 and 261/2007 were allowed following the order in S.B. Civil Writ Petition no.6354/2006.

The genesis of the dispute is that in terms of clause 20(2) of the Service Bye-Laws 1977 framed by the Board, the conditions of service of the employees/officers of the Board, among other things, are governed by the Rajasthan Service Rules (RSR) and other rules relating to general conditions of service issued and amended from time to time. On 29.5.2004 rule 56 of the RSR whereunder the age of retirement of government servants was fixed at fifty eight years was amended and the age of retirement was raised to sixty years. According to the writ petitioners-respondents, by reason of the amendment read with clause 20(2) of the Service Bye-Laws they are entitled to continue in service up to the age of sixty years which now is the retirement age of the employees of the Board.

Upholding the case of the respondents, the learned Single Judge observed as under :-

> “. . . . . State Government or the Board if intended that such an amendment for change of age of superannuation of Board employee from 58 to 60 years would not be made applicable, in that eventuality, only option left for them is to make suitable amendment in Clause 20(2) of Service Byelaws 1977 and which can always be prospective in effect. . . .”

On 22.2.2007, by Resolution no.41, the Board inserted clause 35-A in the Service Bye-Laws fixing the compulsory retirement of the employees of the Board as under :-

> "35-A. Compulsory retirement on attaining the age of superannuation –
>
> (i) The date of Compulsory retirement of a Board employee, other than a Board employee of class IV is the afternoon of the last day of the month in which he attains the age of 58 years.
>
> Note – A Board employee whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 58 years.
>
> (ii)The date of compulsory retirement of a Board employee of class IV is afternoon of the last day of the month in which he attains the age of 60 years.
>
> Note – A Board employee of class IV whose date of birth is the first day of a month shall retire from service in the afternoon of the last day of the preceding month on attaining the age of 60 years."

The above amendment in the ordinary course should have brought the curtain down on the dispute, but not ready to give in, counsel for the respondents tried to wriggle out of the situation. Counsel for the appellant on their part also assailed the correctness of the judgment of the learned Single Judge. We shall first deal with the submissions advanced on behalf of the respondents.

It was initially submitted that the amendment can be only prospective and therefore would not affect the existing rights of the employees and they are entitled to continue up to the age of sixty years placing reliance on a decision of the Supreme Court in

Harwindra Kumar Vs. Chief Engineer, Karmik, (2005) 13 SCC 300. Alternatively, it was submitted that the amended bye-law can take effect only from the date of publication in the Official Gazette. In this regard reliance was placed on Harla Vs. The State of Rajasthan, AIR 1951 SC 467. It was also submitted that the amendment by implication amounts to acceptance of the respondents' case that the retirement age of the employees of the Board was sixty years; else, there was no need to insert clause 35-A in the bye-laws. It was pointed out that the observation of the learned Single Judge to the effect that the Board can amend the bye-laws was in reference to clause 20(2) which has not been amended; in stead, a new clause, clause 35-A, has been inserted which is not in accordance with the observation of the learned Single Judge. In any view, it was urged, the order of the learned Single Judge does not suffer from any error to warrant interference by the Division Bench and the appeals are fit to be dismissed.

On behalf of the appellant it was submitted that by virtue of Section 22-M of the Rajasthan Agricultural Produce Markets Act, 1961 (in short, 'the Markets Act'), the rules applicable to the Market Committee are applicable mutatis mutandis to the Board, and as under rule 8(c) of the Rajasthan Agricultural Produce Markets (Market Committee Employees) Service Rules, 1975, the age of retirement of employees of market committees in superior service has been fixed at fifty eight years, it would follow that the retirement age of employees of the Board too is fifty eight years. The amendment in the Service Bye-Laws, by inserting

clause 35-A, it was submitted, was by way of abundant caution. The submission of the counsel for the respondents that the amendment cannot take effect unless it is published in the Official Gazette was countered with reference to the provisions of Section 25 of the Rajasthan General Clause Act. It was submitted that under Section 25 of the said Act, unless there is requirement of publication of any rule, regulation or bye-law in the Rajasthan Gazette, it is not necessary to get them published in the gazette. It was stated that the amendment has been incorporated in the Book titled 'Rajasthan State Agriculture Marketing Board (Service) Bye-Laws, 1977 and an updated edition – as amended upto 22.2.2007 - has been duly published by the Board. The publication was in the same manner as the original 'Service Bye-Laws 1977'. The said publication, according to counsel for the appellant, amounts to sufficient publication of the bye-law.

Before examining the contentions of the counsel for the parties, it may be mentioned that the Board was established after amendment in the Markets Act by Rajasthan Act no.15-A of 1973. Earlier the Act contained provisions with respect to the market committees alone. The legislature apparently considered it appropriate to create a body to exercise control and supervision over the market committees and incorporated provisions to that effect in newly added Chapter IV-A in the Act. When the Board came into existence there were no rules which could be applied to its employees but rules applicable to the employees of the Market Committee were readily available. That is how, it appears, in Section 22-M it was provided that rules applicable to the Market

Committee shall mutatis mutandis apply to the Board.

It is not necessary to go into the question whether the expression “applicable to the Board” would include within its ambit employees of the Board as well, for the Board soon after it came into existence framed Service Bye-Laws in 1977, referred to above, in exercise of power under clause (f) of Section 22-L. Section 22-L confers power on the Board to frame bye-laws for the purposes as mentioned therein. It includes, vide clause (f), “Any other purpose which, in the opinion of the Board is expected to further the interests of the Board or the market committees or lead to improvement of marketing of agricultural produce”.

At this stage, before proceeding further, it would be apposite to quote clause 20(2) of the Service Bye-Laws as under :-

> **“20. REGULATION OF PAY, LEAVE & ALLOWANCES ETC.-**
>
> Except as provided in these bye-laws, the pay, allowances and other conditions of service of the members of the services shall be regulated by :
>
> 1. . . . .
>
> 2. Rajasthan Services Rules 1951 and other rules relating to general conditions of services issued and amended from time to time.
>
> 3. . . . .”

It would not be out of place to mention that the bye-laws have been framed, as would appear from its preamble, for regulating the recruitment and conditions of service of persons appointed to the services of the Board. There can be no dispute that retirement is a condition of service, and therefore the Board is

competent to frame bye-laws fixing the age of retirement of its employee(s) by incorporating specific provision to that effect as has been done by inserting clause 35-A in the bye-laws.

The words “Except as provided in these bye-laws” in clause 20, in our opinion, are crucial and they provide answer to the submissions advanced on behalf of not only the respondents but also the appellant. The submission of counsel for the respondents was that since Rajasthan Service Rules (RSR) has been made applicable to govern the service conditions of the employees of the Board under clause 20(2), unless the amendment is made in that clause, as observed by the learned Single Judge, the retirement age cannot be changed. The submission overlooks the words “except as provided in these bye-laws”.

On a plain reading, it would appear that the provisions of the RSR as indeed other rules/orders referred to in clause 20(2) shall govern the service conditions unless specific provisions are made in the bye-laws. By inserting clause 35-A in the Service Bye-Laws, the Board incorporated a specific provision regarding retirement age of the officers and employees of the Board and therefore clause 35-A would appear to be in consonance with clause 20. It was not necessary to make any amendment in clause 20(2), and by inserting clause 35-A, the Board was competent to fix the retirement age of its employees.

These observations apply equally to the submission advanced on behalf of the appellant on the

strength of rule 8(c) of the Rajasthan Agricultural Produce Markets (Market Committee Employees) Service Rules. As seen above, the rules applicable to the market committee were made applicable to the Board by Section 22-M at the time when the Board had just been established and no rules or regulations had been framed by it but rules governing the service conditions of the employees of the market committee were available. After the Service Bye-Laws came to be framed in 1977, the Market Committees Rules lost their relevance so far as the employees of the Board are concerned. As per clause 20(2), service conditions of the employees of the Board are governed by the rules, orders etc. as specified therein "except as provided in these bye-laws". We therefore do not find any substance in the submission advanced on behalf of the appellant that by reason of rule 8(c) of the Market Committee Employees Rules, the retirement age of the employees of the Board should be treated as fifty eight years.

The submission of the counsel for the respondents that the amendment would not affect the existing service conditions including retirement age of the employees is totally misconceived and reliance on Harwindra Kumar Vs. Chief Engineer, Karmik, (2005) 13 SCC 300, in this regard is totally misplaced. In K. Nagraj Vs. State of Andhra Pradesh, (1985) 1 SCC 523 – which was a case of reduction of retirement age from 58 to 55, the Supreme Court declined to interfere observing –

> ". . . . .Public interest demands that there ought to be an age of retirement in public services. The point of the peak level of efficiency is bound to differ from individual to individual but the age of retirement

> cannot obviously differ from individual to individual for that reason. A common scheme of general application governing superannuation has therefore to be evolved in the light of experience regarding performance levels of employees, the need to provide employment opportunities to the younger sections of society and the need to open up promotional opportunities to employees at the lower levels early in their career. Inevitably, the public administrator has to counterbalance conflicting claims while determining the age of superannuation. On the one hand, public services cannot be deprived of the benefit of the mature experience of senior employees; on the other hand, a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the services and the younger sections of the society. The balancing of these conflicting claims of the different segments of society involves minute questions of policy which must, as far as possible, be left to the judgment of the executive and the Legislature. These claims involve considerations of varying vigour and applicability. Often, the court has no satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of a given case. We do not suggest that every question of policy is outside the scope of judicial review or that, necessarily, there are no manageable standards for reviewing any and every question of policy. Were it so, this Court would have declined to entertain pricing disputes covering as wide a range as cars to mustard-oil. If the age of retirement is fixed at an unreasonably low level so as to make it arbitrary and irrational, the court's interference would be called for, though not for fixing the age of retirement but for mandating a closer consideration of the matter."

In Harwindra Kumar Vs. Chief Engineer (supra) – a decision somewhat closer to the facts of the present case, while holding that on increase of the retirement age of the government employees, the enhanced retirement age would be applicable to the employees of the U.P. Jal Nigam and by administrative decision neither the Nigam nor the State Government can direct that the same would not be applicable to them, observed as under :-

> "For the foregoing reasons, we are of the view that so long as Regulation 31 of the Regulations is not amended, 60 years which is the age of superannuation of government servants employed under the State of Uttar Pradesh shall be applicable to the employees of the Nigam. However, it would be open to the Nigam with the previous approval of the State Government to make suitable amendment in Regulation 31 and alter the service conditions of employees of the Nigam, including their age of superannuation. It is needless to say that if it is so done, the same shall be prospective."

The above decision, it would appear, supports the stand of the appellant to the extent that the Board has power to fix the retirement age of its employees by suitably amending the Service Bye-Laws (in the case of Harwindra Kumar, the Regulations), which will be prospective in effect. We have seen above and held that the Service Bye-Laws have been validly amended.

We would now consider the submission about coming into force of the amendment. We find force in the plea advanced on behalf of the appellant that in the absence of any requirement as to publication in the Official Gazette, the respondents cannot contend that unless the amended bye-law is published in the Gazette it will not come into effect. Section 25 of the Rajasthan General Clauses Act on which reliance was placed on behalf of the appellant runs as under :-

> "**25. Publications of orders, etc. in Raj. Gazette to be deemed to be due publication.-** Where, in any Rajasthan law or in any rule, regulation or bye-law made thereunder, it is directed that any rule, regulation, bye-law, notification, order, scheme, form or other matter shall be notified or published, then such notification or publication shall, unless such law, rule, regulation or bye-law otherwise provides, be deemed to be duly made if it is published in the Rajasthan Gazette.
>
> **(emphasis added)**"

On a plain reading, it would appear that the rule, regulation or bye-law made pursuant to the Rajasthan Law is required to be published in the Rajasthan Gazette only when the statute directs such publication. We have noticed above Section 22-L of the Markets Act and from a bare glance thereof it is manifest that there is no requirement of publication in the Gazette. The specific case of the appellant is that the amendment has been incorporated and made part of the Book titled 'Service Bye-Laws' which has been duly published in the manner as the original Service Bye-Laws had been published.

In Harla Vs. The State of Rajasthan (supra), relied upon on behalf of the respondents, the appellant had been convicted for committing a criminal offence under the Rajasthan Opium Act and sentenced to fine of Rs.50/-. The Rajasthan Opium Act was found to have been passed under resolution by the Council of Ministers on behalf of the Maharaja during his minority which was not promulgated by way of publication in the Gazette or other means to make the Act known to the public. In that context, the Supreme Court observed that –

> “. . . . . Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognizable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. . . The mode of publication can vary; what is a good method in one country may not necessarily be the best in another. But reasonable publication of some sort there must be . . . .We hold that, in the absence of some specific law or custom to the contrary, a mere resolution of a Council of Ministers in the Jaipur State without further

> publication or promulgation would not be sufficient to make a law operative."

We should not be understood to mean that the in cases of criminal offence alone there should be publication of the relevant law. However the above observations in Harla Vs. State of Rajasthan (supra), rather support the stand of the appellant, for it says in no uncertain terms that the publication in the gazette is not the only means of publication. What is important is that it should be made known to the public i.e. the persons who are likely to be affected. The mode of publication would depend on the requirements of the statute; where the statute is silent, it should be in the manner in which it becomes known to the public or the persons concerned.

A Constitution Bench of the Supreme Court in the well known case of Bachhittar Singh Vs. State of Punjab, AIR 1963 SC 395 held that the essential ingredient of any government order is that it must be communicated to the person concerned, and unless and until it is so communicated, it does not assume the character of government order. Where thus an order is directed against a person, in order to assume character of government order the order must be communicated to him, where the order is general in nature, the communication has to be to the public at large in the form of publication.

Having made these observations we would clarify that in the instant case we have to consider the question from the angle as to whether there was any

requirement of publication in the Official Gazette. We have seen above that the amended bye-law has been incorporated in the latest edition of the book ‘Service Bye-laws’ and it has been published in the same manner as the original compendium which in the absence of any requirement of publication in the gazette amounts to due publication. After such publication, the respondents can not contend that the communication has not been made to them or the employees at large of the Board.

On behalf of the appellant, an apprehension was expressed that if the judgment of the learned Single Judge is allowed to stand and it is held that the retirement age of the employees of the Board was sixty years until insertion of clause 35-A, it would create an anomalous situation and cause heavy financial burden on the Board, for, it was stated, a large number of employees have retired in the past on attaining the age of fifty eight years and they may lodge claim for their salary, emoluments etc. It was stated that if they have not worked during the period they should not be paid salary for this period.

The apprehension of the appellant, in our opinion, is unfounded. Nevertheless it requires clarifications. Having held that the retirement age of the employees of the Board was sixty years until 22.2.2007, the persons who have already retired on attaining the age of fifty eight years but have not age of sixty years as on that date have to be treated as members of the service. If they did not work during the period, they would not be entitled to salary but they would be entitled to

notionally count the period as part of service and entitled to retiral benefits. Such of them who remained in active service and performed duties would be also entitled to the salary and other emoluments for the period up to 22.2.2007 or attaining the age of sixty years whichever was earlier.

These appeals stand disposed of in the above terms.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Skant/-